

Remarks

Claims 36-90 have been rejected under 35 U.S.C. §251 as being an improper recapture of surrendered subject matter in the parent application. Particularly, the Office Action asserts that a broadening aspect is present in the reissue Independent Claims 36, 42, 49, 58, 59, and 76 that was not present in the application for patent, and that because the alleged surrendered subject matter relates to the alleged recaptured matter, the unduly narrow scope of the parent claims was not permissible error within the meaning of the reissue statute. Furthermore, the Office Action states that Applicant's reissue oath/declaration is defective because it fails to correctly identify at least one error that is relied upon to support the reissue application.

As to the Office Action's rejection of the Applicant's reissue oath/declaration, please see the amended oath/declaration filed herewith, in which Applicant has correctly cited at least one error in the claims to support the reissue application. Particularly, Applicant has added reference to the limitations, "virtual device driver" and "device driver", included in the originally filed and subsequent reissue claims, respectively. Accordingly, please amend the oath/declaration as follows:

I verily believe the original patent to be wholly or partially inoperative by reason that the patent claims less than I had a right to claim in the patent. For example, claims of the original patent are limited to a "virtual device driver". A subsequent reissue of the original parent include claims that are limited to a "device driver". Neither the limitations, "virtual device driver" nor "device driver", are necessary to overcome the prior art if other limitations are included. The attorney prosecuting the original patent added this limitation deliberately, but did so in error. The error arose in the prosecution of the original application which resulted in the issuance of the patent. The attorney prosecuting the original application failed to appreciate the scope of the invention, and thus limited the claims as indicated above. All errors being corrected arose without any deceptive intention on my part. I further acknowledge my duty to disclose information which is material to the examination of the application under 37 CFR § 1.56.

Applicant respectfully asserts that he has fulfilled his obligation under 35 U.S.C. §251 for asserting an error upon that makes the original application wholly or impartially invalid as required under 37 CFR 1.175(a)(1).

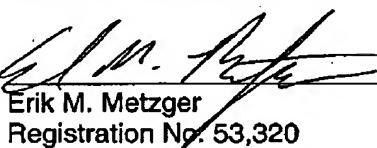
In regard to the Office Action's rejection of Claims 36-90 for alleged improper recapture of surrendered subject matter, Applicant has filed a Notice of Appeal. Therefore, Applicant has not amended the claims nor added any further remarks regarding the rejected claims, pending the outcome of the Appeal process.

If any additional fee is required, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: 4/19/04


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